Supreme Court, U.S.
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No. 96-888

In The

Supreme Court of the United States

October Term, 1996

ROCKY MOUNTAIN CONFERENCE OF THE UNITED METHODIST CHURCH, a Colorado non-profit corporation,

Petitioner,

v.

DIANNE R. WINKLER,

Respondent.

Petition For A Writ Of Certiorari To The Colorado Court Of Appeals

BRIEF IN REPLY ON PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Is a church when hiring, supervising, disciplining and discharging clergy inextricable involve in religious activity protected by the First Amendment of the United States Constitution or is the Church exposed to tort claims while doing so?

2. Where no compelling interest is identified to justify the burden on a religious organizations practice of religion may tort claims be allowed?

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RESPONDENT'S STATEMENT OF THE CASE

The statement on page 1 of the Respondent's brief in opposition, ". . . . Based on the *antecedent* knowledge of the Conference that Chambers had sexually approached other vulnerable people and had a long standing and untreated alcohol problem . . . " (emphasis added), is in part not supported by the evidence and is in part misleading. The Conference's investigation of the written official complaint filed by one Carol D. Klein, dated March 19, 1992 (Appendix A, Exhibit 27) uncovered Respondent, Dianne Winkler, had a complaint of sexual harassment by Rev. Chambers. Prior to March 19, 1992, the only remotely comparable evidence of sexual harassment by Rev. Chambers known to the Conference is that in October of 1991 a member of the Grace Church, Jan Place, made a telephone call to District Superintendent Margaret Rush Hankins reporting she was not happy with the way Glenn Chambers spoke to her and acted in her presence but declined to make an official written grievance, as required pursuant to the Book of Discipline of the United Methodist Church. She asked Rev. Rush Hankins to speak to Rev. Chambers about her concerns, which was done and as a result Rev. Chambers had no further communications with Jan Place. The referred to "long standing and untreated alcohol problem" of Rev. Chambers was concealed from the Conference until the investigation as a result of the Klein letter of March 19, 1992. The Conferences' knowledge of Rev. Chambers' alcohol use was that over the course of the period of time of his membership as a Conference clergy person from 1965 to 1992, it received three expressed concerns about Rev. Chambers' use of alcohol and the Conference addressed the issue with Rev. Chambers each and every time it was raised in a reasonable and conscientious manner based on the type of information and its knowledge of the circumstances.

The first inquiry of alcohol use was in 1980 to Bishop Wheatley who worked with Rev. Chambers intimately and had never observed any alcohol involvement with Rev. Chambers. The second was in the 1980s when Rev. Chambers' district superintendent spoke to him, he said he would quit entirely. The next was in the period 1986 to 1990 when an associate pastor whom life had been greatly impacted by her parents use of alcohol and her

brothers death raised the issue. Again, Rev. Chambers said he would stop.

The Grace United Methodist Church Pastoral Relations Committee requested the return of Rev. Chambers as its senior pastor each year of the thirteen years he was appointed to Grace United Methodist Church by the Rocky Mountain Conference without any expressed concern.

The statement on page two that the 1972 investigation involved "another woman" is itself incorrect. In 1972 Bishop Stuart appointed an investigating committee to look into the breakup of Rev. Chambers' first marriage to determine if there was any "un-ministerial conduct and/or imprudent and un-Christian conduct," as defined in the Book of Discipline of the United Methodist Church, in the breakup of Rev. Chambers' marriage which paralleled society's view at that time that there had to be misconduct on the part of one of the parties to a divorce. In that investigation the then-wife of Rev. Chambers told the committee there "appears" to be "another woman" involved, although two college-age daughters of the marriage said they had no knowledge of a third party, and the committee "after careful consideration and deliberation, . . . agreed there are no grounds for formal charges to be placed against Glenn A. Chambers." See Appendix B, Plaintiff's Exhibit 29, which are the documents as admitted relating to the 1972 matter. In addition, Rev. Chambers testified the 1972 breakup of his marriage investigation related to alcohol use. See Appendix C, copies of trial transcript Vol. 12, pages 158, 159, 184 and 185.

On page two the Respondent also has stated, " . . . The 1986 complaint of Rev. Munsey-Nielson, a female associate pastor of Grace Church that Chambers, on occasion, came into her office, touched her inappropriately, and told her to 'pucker up.' In 1986, Rev. Munsey-Nielson told a district superintendent for the Conference about concerns expressed to her by other women regarding Chambers' actions towards them." The part about "concerns expressed to her by other women regarding Chambers' actions towards them" is not supported by anything in the record. See attached Appendix D, transcript, Vol. 10, pp. 148-164.

Further, Rev. Munsey-Nielson's statement to a district superintendent was not to her district superintendent but to a personal

friend who was a female district superintendent, an admittedly substitute mother figure. The conversation was in confidence, with an indication that Rev. Munsey-Nielson was handling the matter herself and she did not further report it officially to the Conference.

On page two is also the statement, "In 1990, Chambers approached the wife of Junior Minister Harold Anderson, who reported it to the local church. . . . When Conference officials were told directly of Pam Anderson's complaint in 1992, . . . " is a misleading statement which would imply the Conference was aware of Pam Anderson's complaint in 1990 when the truth of the matter is it did not come to the Conference's knowledge until after the March 19, 1992 letter of Carol D. Klein which was the instigating factor for the Conference identifying Dianne Winkler, Pam Anderson and a number of other women as complaining about the conduct of Rev. Chambers.

At the top of page three is a reference to the Jan Place matter, which again is attempting to mislead. When Jan Place called District Superintendent Margaret Rush Hankins in October of 1991, Rev. Rush Hankins knew Jan Place was a member of the Grace United Methodist Church and, since Rev. Chambers was the senior clergyman at the Grace United Methodist Church under her supervision, it was an obvious response by Rev. Rush Hankins when Jan Place started speaking about a minister's conduct that it would be related to Rev. Glenn Chambers. Jan Place had told Rev. Rush Hankins that Rev. Chambers never touched her except for a hug and a caress of her face, wiping away a tear when she came to talk to him about her father making threats of committing suicide. Jan Place testified that her complaint about Rev. Chambers was not identified by her as a sexual matter but that his conduct towards her made her uncomfortable.

On page four Respondent statement, "The church's failure to investigate the growing complaints against Chambers subsequent to 1972" is an exaggerated overstatement as the 1972 matter had to do with the breakup of his first marriage and whether or not there was a violation of the Book of Discipline concerning ministerial conduct and the remaining three matters that were brought to the attention of the Conference from 1972 to 1992 had to do with the question of Rev. Chambers' use of alcohol. The first such alcohol use inquiry did not occur until 1980. There was no "failure to

investigate" and there was not "growing complaints" against Rev. Chambers prior to the March 19, 1992 written letter of Carol D. Klein.

The statement on page four, " . . . the church is undermining the credibility of the women by telling the congregation there was nothing in Chambers' history that indicated he had problems" is only true in that there were no actual prior complaints about Rev. Chambers of a problem with women, so there could not be any statement about Rev. Chambers' history other than that there had been no reported problems to the Conference about women.

The statement on page 4, "Telling the congregation that the women hurt by Chambers were being given counseling, when they were not" is a misstatement. Rev. Rush Hankins had brought an Episcopal therapist to the first meeting with the women who had complaints against Rev. Chambers, recommended by the personal counselor of Carol D. Klein. These women themselves chose subsequently to see as a group another therapist who was recommended to them by the interim pastor at Grace United Methodist Church, not the Conference.

REASONS FOR GRANTING THE WRIT

I. THE DECISION OF THE COLORADO COURT OF APPEALS CONFLICTS WITH THIS COURT'S PRIOR RULINGS ON THE FIRST AMENDMENT PROTECTION AGAINST INTERFERENCE WITH A CHURCH IN ITS ACTIONS INVOLVING CLERGY.

As can be readily seen by Statement of Facts as set forth by the Respondent, the alleged basis for finding the Conference responsible for the tort of negligent hiring and supervision rested upon an investigation of the 1972 breakup of Rev. Chambers' first marriage and a few questions raised at the Conference about Rev. Chambers' use of alcohol. There was no known knowledge on the part of the Conference of any complaints about Rev. Chambers' sexually harassing women until March 19, 1992 when Carol D. Klein filed her written grievance and the Conference conducted an investigation during which they identified Dianne Winkler and others as women who had similar complaints they had never reported to the Conference. The basis for the claim on fiduciary

duty relates to the Conference's actions in pursuing the complaint of Carol D. Klein against Rev. Chambers.

The Conference placed in evidence as Exhibit A the Book of Discipline of the United Methodist Church which is the denomination's implementation of its faith originated over 200 years ago, founded in 1784 and has been subject to amendment each four years at the General Conference of the denomination. The 1988 Book of Discipline, Defendant's Exhibit A, was the discipline which applied to the present case, states at page V, "The Discipline sets forth the theology grounding of the United Methodist Church in Biblical faith . . . ". The Book of Discipline states at ¶ 453 that the grievance procedure is based on "Ordination and membership in an Annual Conference in the United Methodist Church is a sacred trust. The qualifications and duties of . . . (ministers) . . . flow from the Gospel as taught by Jesus the Christ and proclaimed by his Apostles." It goes on to state the grievance procedure is " . . . the reconciliation and restoration of the ordained minister and the strengthening of the church. If the remedial process is unfruitful, discontinuance or termination may follow. A grievance is a written and signed statement claiming misconduct or unsatisfactory performance of ministerial duties. The person filing the grievance of the process for the filing of the grievance and the ordained minister shall be informed of the process and its purpose."

The above are required by the United Methodist Church and are based on their religious belief and procedures. These are the religious beliefs and activities protected by the First Amendment and cannot be second-guessed under tort claims as argued by Respondent.

A. THE CONFERENCE'S (CHURCH) ACTIVITIES IN THIS CASE WERE NOT "SECULAR CONDUCT"

As this Court has previously held numerous times, religious organization's activities concerning the hiring, supervision, disciplining and discharging of its clergy is inextricably rooted in its religious belief and practices. In the present case, Respondent Dianne Winkler was permitted to attack the very fabric of the

Conference's hiring, supervision, disciplining and ultimately retiring Rev. Chambers under very strict circumstances.

When you allow tort claims to be brought against a religious organization concerning its clergy, which second-guess their handling of a divorce by the clergy person twenty years before the complained of tort allegedly occurred or questioned the manner in which the Conference responded to inquiries concerning alcohol use by a clergy person three times in 27 years, you are invading and burdening the free exercise of religion by the religious organization.

The Conference is not arguing that sexual harassment of congregation members by appointed clergy is per se protected by the First Amendment Free Exercise Clause or Establishment Clause, but that the courts cannot intrude into ecclesiastic decisions regarding clergy without the issue involving both the Free Exercise Clause and Establishment Clause, because it involves governmental intrusion into both ecclesiastical and individual decision making. The appointment, supervision, discipline and discharge of clergy is inherently of prime ecclesiastical concern and inextricable from religious doctrine. The Colorado Supreme Court, in the case of *Van Osdol v. Vogt,* 908 P.2d 1122 (Colo. 1996), clearly acknowledges this to be the case. However, in footnote 17 on pages 1132 and 1133, the Colorado Supreme Court evades this very stated principle by allowing an exception if at the time of hiring the church had reason to believe that hiring the clergy person would create an undue risk of harm to others and the specific danger which ultimately manifests itself could reasonably have been foreseen at the time of hiring. This inquiry is to be limited and factually based, accomplished with no inquiry into religious beliefs. However, even this attempted exception by the Colorado Supreme Court was not what has taken place in this case, as there was no prior knowledge on the part of the Conference of any specific danger which ultimately manifests itself, i.e. sexual harassment, and therefore the Conference could not have foreseen such conduct on the part of Rev. Chambers. In the present case, the evidence used to support the tort claims consisted of second-guessing and misrepresenting an investigation twenty years before, involving the breakup of Rev. Chambers' marriage and approximately three inquiries to the Conference concerning alcohol use by

Rev. Chambers and the response of the Conference to each of those inquiries. There is no evidence in this case that the breakup of the marriage 20 years before or a problem with alcohol three times in 27 years, in any manner equates to a notice of a potential claim of sexual harassment. Respondent in this case was permitted by the Colorado courts to go forward with a claim clearly in violation of the First Amendment protection afforded to religious organizations in dealing with their clergy. The evidence of the claimed torts by the Conference was not "secular conduct," as attempted to be argued by the Respondent in this case.

B. CONDUCT OF THE CHURCH IN THIS CASE IS BASED ON SINCERELY- HELD RELIGIOUS BELIEF AND IS SUPPORTED BY THE RECORD

The record in this case on the evidence established the Conference (1) was never aware of any complaint of sexual harassment by Rev. Chambers prior to March 19, 1992 and (2) upon receiving a written grievance required under the Book of Discipline of the United Methodist Church about sexual harassment by Rev. Chambers, it proceeded forwarded, following the Book of Discipline procedures, to process the complaint against Rev. Chambers which resulted in his suspension, forced alcohol treatment, revocation of his appointment to Grace United Methodist Church, requiring him to undergo psychiatric evaluation, and ultimately caused him to be retired under severe restrictions preventing him from referring to himself as a United Methodist minister or conducting any type of activities as a minister. During the entire process of hiring, supervision, disciplining and discharging Rev. Chambers, it did not conduct any "tortious conduct" toward Respondent Dianne Winkler or any of the other women who had complaints against Rev. Chambers and at all times the Conference was proceeding on the basis of its sincerely held religious beliefs and practices. The statement on page 13 by Respondent in her Brief at the end of the second paragraph from the bottom of the page that, "The fact that procedures are written down and set forth in a document does not create a presumption that the procedures are motivated by a deeply held religious belief," reflects a clear lack of appreciation for the manner in which the United Methodist Church has conducted its

business since its inception and ignores the very language within the Book of Discipline which states:

> "The Discipline is the book of law of the United Methodist Church. It is the product of many General Conferences of historic religious bodies which now form the United Methodist Church."
>
> "The Discipline as the instrument for setting forth the laws, plan, polity, and process by which United Methodists govern themselves remains constant. Each general conference modifies, elaborates, clarifies, and adds its own contribution to the Discipline. We do not see the Discipline as sacrosanct or infallible, but we do consider it as a document suitable to our heritage. It reflects our understanding of the church and of what is expected of its ministers and members as they seek to be effective witnesses in the world as a part of the whole body of Christ."
>
> "The Discipline sets forth the theological grounding of the United Methodist Church in biblical faith . . . "

The Discipline is clearly and completely a setting forth of the deeply held religious belief of the United Methodist Church and the effort of the Respondent to trivialize and void this fact of itself speaks volumes for the need of this Court to grant the Petition for Writ of Certiorari and require the Colorado courts to recognize the full extent of the First Amendment and its protection to religious organizations when they are dealing with their own clergy.

The Respondent's continual attempts to claim that the Conference in this case is attempting to hide behind the First Amendment so it can commit tortious acts shows a lack of understanding of the argument being made by the Conference. The alleged tortious acts of sexual harassment, if they occurred, were done by Rev. Chambers. The tort claims against the Conference are based upon second-guessing its conduct in hiring, supervising, disciplining and discharging Rev. Chambers in the light of this alleged conduct, which the record establishes it did not prior to March 19, 1992 have any information concerning the complaints against Rev. Chambers for sexual harassment. The Conference's conduct in dealing with

its clergy is at all times protected by the First Amendment and such second-guessing is not permitted.

The statement by the Respondent on page 14 in the second paragraph that Rev. Chambers had a "known history of sexual abusive behavior with women" is not true until after the March 19, 1992 filing of a written complaint by Carol D. Klein, investigation of which led to the Respondent, Dianne Winkler, and a number of other women who had similar complaints and immediate action was taken by the Conference upon receipt of such complaint. Thus, there was not a "known history" which could have led the Conference to take action prior to the time that it did in this case.

II. THE RELIGIOUS FREEDOM RESTORATION ACT, U.S.C., § 2000bb IS APPLICABLE TO A CHURCH'S ACTIVITY REGARDING CLERGY HIRING, SUPERVISION, DISCIPLINING AND DISCHARGE.

Contrary to the statements of the Respondent, the Religious Freedom Restoration Act in this case would require a compelling interest test. The first of the three-stage analysis is whether the conduct in question is motivated by a religious belief. The hiring, supervision, discipline and discharge of clergy is motivated by a religious belief.

The second stage is whether the state action infringes on the free exercise of religion. Whenever the state second-guesses the activity of the religious organization in the manner in which they hire, supervise, discipline and discharge clergy, it is infringing on the free exercise of religion. The third stage is whether there is a state interest of sufficient magnitude to override the interest, claiming protection under the Free Exercise Clause. The Colorado courts in this case have not even addressed the issue of what the state interest is in preventing sexual harassment which would create a sufficient magnitude to override the church religious activities and beliefs in dealing with clergy. It must be remembered that we are not talking about Rev. Chambers' conduct and responsibility, but we are talking about the Conference's actions and responsibility where women claim sexual harassment by Rev. Chambers.

The allegation by the Respondent that the Religious Freedom Restoration Act requires the actual tortious acts of Rev. Chambers in sexually harassing the women be mandated by a religious belief in order to come under the act is to misunderstand and fail to separate the conduct and rights of the Conference and those of Rev. Chambers, both of whom are separate entities in considering tort claims against them. Rev. Chambers is the one accused of sexual harassment, not the Conference.

CONCLUSION

The Colorado Court of Appeals' decision does not comport with the previous pronouncements of this Court in areas where a church is hiring, supervising, disciplining and discharging its clergy. This activity is inextricably involved in a religious activity protected from tort claims by the First Amendment of the United States Constitution. In addition, there is no compelling interest identified in this case to justify the burden placed on the church in its practice of religion to allow direct tort claims based on second-guessing the actions of the Conference in handling clergy.

Dated this 27th day of December, 1996.

Respectfully submitted,

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APPENDICES

APPENDIX A

MINE

March 19, 1992

To:

The Rocky Mountain Conference of
The United Methodist Church

From:

Carol Klein,
Grace United Methodist Church

Having lived in fear for too long that I would be subjected to further improper sexual attentions by the Reverend Glenn R. Chambers at MY CHURCH, Grace United Methodist; I feel the time has come today to stand up for my Self and for the rights of others who may be afraid to speak.

This cannot continue. I feel I was not the first, nor was I the last. It was very wrong, and if I can not be SAFE in my church – where CAN I be safe?

Glenn Chambers must be stopped! There MUST be NO MORE VICTIMS! NO MORE! I am considering going to Civil Court.

Respectfully,

Carol A. Klein
3399 So. Galend Ct.
Denver, Colorado
80231-4729

APPENDIX B

The Conference Investigating Committee was called together by Delbert Paulson the request of Bishop Stuart.

The full committee met at Park Hill United Methodist Church, Denver, Friday, March 3, 1972 at 1:15 P.M. Those present were: J. Carlton Babos, H. Preston Childress, Bronston M. Greenwood, Donald J. Grooters, William L. Woelfle, Delbert Paulson served as chairman, Donald J. Grooters, Secretary.

The case for consideration was that for ascertaining whether or not there was possible unministrial conduct and/or imprudent and unchristian conduct as these relate to the break-up of the home and filing for divorce on the part of Glenn A. Chambers.

Information was given the Committee that Loveland Pass was closed and therefore it would be impossible for the Committee to go to Glenwood Springs to talk with Joan Chambers (wife).

It was agreed that inasmuch as the Committee could not get to Glenwood Springs to visit face to face with Joan Chambers, we visit with her by telephone.

The Committee travelled to Ft. Collins and interviewed Debra (Debbie) Chambers at 3:30 P.M. at First United Methodist Church. She is a Freshman at Colorado State University.

The Committee returned to Denver and visited with Cynthia (Cindy) Chambers at Headquarters at 5:30 P.M. She is a Senior at the University of Denver.

Both girls indicated in varying intensity that their father had given insufficient time and attention to the family. They both affirmed no knowledge of a "Third party" being involved as a contributing factor in the present divorce proceedings.

The Committee visited with Joan Chambers by telephone 8:30 - 9:15 P.M. She indicated that "another woman" "appears" to be involved. She feels that she has tried to hold the home together.

The Committee met with Glenn Chambers Saturday 9:30 A.M. in East United Methodist Church, Colorado Springs.

Dr. Rex Williams, psychiatrist, visited with the Committee (10:30 A.M.)

Wesley Strain, chairman of the Pastor-Parish Relations Committee of St. Paul Church, met with the Committee (11:30 A.M.)

Pete Barber, Superintendent of the Colorado Springs District met with the Committee (noon).

Dr. Richard Bell, St. Paul Church members and family friend, visited with the Committee at 12:30.

Glenn Chambers met again with the Committee at 2:00 P.M. and we further discussed with him some of the information, impressions and evaluations which the above people had shared.

After careful consideration and deliberation it was agreed that there are no grounds for formal charges to be placed against Glenn A. Chambers. The committee recommends that he receive professionally adequate personal counseling. The committee also recommends that Joan Chambers

receive professional counselling and be assured adequate legal counsel during the divorce proceedings.

The Committee recommends that the Colorado Springs District Superintendent help implement the above mentioned recommendations.

Adjourned – 3:00 P.M.

/s/ Donald J. Grooters
Donald J. Grooters
Secretary

March 21, 1972

Dear Don:

I have received your two letters and the copy of your report of the Investigating Committee with regard to Glenn Chambers. Don, I am deeply grateful to you and to the members of the Committee for the job you have done. It is difficult, I know, and yet I have the feeling that you five men have handled this with a great deal of compassion and objectivity.

I sincerely hope Glenn will get counseling. He has indicated in the past that he did not need it. In fact, Dr. Williams felt that it would take some great shock to make Glenn get the kind of help that he desperately needs. If Glenn will get psychiatric help and get himself squared away, it will enhance his effectiveness significantly. It is a

tragedy that the family did not get help earlier so that they could be held together.

I was glad to get the word on Louis Haruf. I had been reasonably certain that he was going to retire, but it makes it definite to have this word.

I see no reason why we should not seriously consider Lonnie Eakle for your staff, and I am sure the men are discussing this while I am away.

We are certainly happy that Ron is now home. What a blessed relief it is to you and Bernie to have him safely back.

We miss seeing you and Bernie from time to time. Your friendship is one of our most valuable possessions. Blessings on you both.

Sincerely,

Bishop R. Marvin Stuart

Dictated by Bishop Stuart
Signed in his absence
RMS/th

The Reverend Donald J. Grooters
108 E. 18th St.
Cheyenne, Wyoming 82001

THE FIRST UNITED METHODIST CHURCH
(LOGO) MINISTERS
PHONE 632-1410 Donald J. Grooters
Louis A. Haruf
108 East 18th Street – Cheyenne, Wyoming 82001

March 7, 1972

Bishop R. Marvin Stuart
2200 S. University Blvd.
Denver, Colorado 80210

Dear "Bish":

If I have correct information you and Mary Ella are on vacation and I sincerely hope you are getting some wonderful relaxation and refreshing. It probably is past-due.

I am enclosing the minutes of the recently completed meeting of the Conference Investigating Committee in regard to Glenn Chambers. Of course, the minutes do not reflect the intricate and complex nature of the whole situation.

We are very strongly convinced that both Joan and Glenn are in need of good psychiatric counselling.

I am sure that Del will be very willing to fill you in on much of the details as we finally were able to piece it together. I will be willing to visit further with you about any part of it, if you so desire.

I do have another matter to share with you that I will put in a separate communication.

I did want you to have the report of the Investigating Committee as soon as possible.

Cordially,

/s/ Don
Donald J. Grooters

Encl. 1
DJG/jb

APPENDIX C

93CV378

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DIANNE R. WINKLER
VS
GLENN CHAMBERS, ET AL

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[p. 158] A Yes, sir.

Q That was the church you were pastoring?

A Yes.

Q Now, you indicated that you don't recall much about this March 1972 investigation, is that true?

A That is true, sir.

Q In the investigative report it says that the committee met with Glenn Chambers. Do you recall any meeting like that?

A I'm sorry, I do not recall sitting with the committee. If the minutes indicate that I very likely did if that's what they said I did. I do not recall at the moment sitting with the committee.

Q You don't remember. Do you know Donald Grooters?

A Yes, sir. I do know Donald Grooters.

Q You don't recall meeting with him about some concern the Conference had?

A I do know that someone had approached me that there would be a Committee on Investigation because of the concern I thought of alcohol that my then wife had brought up, and as I look back I don't remember who it was. If I was guessing I would have thought it was my district superintendent who called that to my attention, Pete Barker. That doesn't mean Donald Grooters did not [p. 159] speak to me. It just means I don't recall that.

Q Was alcohol a problem in the break-up of your first two marriages?

A I believe so.

Q Was there other problems that you recall at this time that were worth mentioning in the break-up of your marriages?

A No, sir. When you say, "worthy mentioning," you mean something I heard since I have been in trial or at that time?

Q Particularly at that time, or any indication, in other words, other than the fact you and your wives grew apart.

MR. MORRATO: Can we approach the bench, Your Honor?

THE COURT: Yes.

(Whereupon, the following was had at the bench out of the hearing of the jury)

MR. MORRATO: I want to be sure we're not getting into the area of the alleged involvement of his step-children. If we're getting into that, or if we're getting into the alleged suggestion there might have been a problem with him and his daughters in the 1972 investigation, those are two of the areas that the plaintiff is precluded from going into, and I want to be

* * *

[p. 184] discussing it in the context of that, as I recall, which probably would have been in March.

Q Probably would have been in March?

A I think so. That's when Mr. Custard talked with me.

Q When did you talk with Harold Anderson?

A I don't remember the date of that.

Q After you touched Carol Klein's breast, would that be in 1985?

A I don't recall the date. It would have been somewhere in the '80's, yes.

Q You said it shocked you?

A Yes.

Q You never apologized to Carol Klein, did you?

A No, ma'am; not for that I did not.

Q You indicated to this jury you believe the 1972 investigation was about alcohol?

A Yes, ma'am.

Q And there was some report out there that said there is absolutely no basis for believing there is any problem?

A I believe the report that I saw said after a thorough investigation, this won't be exact, after a thorough investigation there were no grounds for charges to be brought against me.

[p. 185] Q Which wasn't true according to what you told us today. You had a serious alcohol problem in 1972, correct?

A The committee did not know that.

Q Actually, this committee had no idea you had an alcohol problem, did they?

A No. Nor did I at that time.

Q Isn't it correct this Investigation Committee had nothing to do with alcohol?

A No, ma'am, I don't believe that.

Q Are you aware that Bishop Stuart denies that being the focus of his investigation in 1972?

A I saw something since this trial began and I believe that Bishop Stuart had a concern.

Q Isn't it correct that you were aware Bishop Stuart denies that this investigation had anything to do with alcohol?

A Since this trial began I have gotten that information; not before.

Q You also read the letter from the bishop which says there that the problem has been addressed before, correct?

A I wouldn't have a good recall on the letter, because I had seen no letter until we came here and I have not read that in detail.

APPENDIX D

93CV378

94 CA 652
94 CA 661

DIANNE R. WINKLER
VS
GLENN CHAMBERS, ET AL

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[p. 145] bench outside the hearing of the jury:)

MR. QUIGLEY: Your Honor, I am going ask you consider letting this witness testify without the presence of the jury on the confidentiality issue to see if the rest of her testimony is admissible.

THE COURT: What confidentiality issue? The way I understand, this witness will be allowed to testify on the matter she told to Reverend Janice Sumner, and it's been represented that we believe she said she did not intend to have it passed on to anybody else. And I think she has said, in fact, her testimony in the deposition, when I re-read it, she intended – or told Reverend Sumner she was going to handle it herself.

MS. SEELEN: She also said there was no binding of confidentiality.

THE COURT: It is ruled that the statement of Reverend Munsey and the request to Sumner, that it not go any further because it was confidential or whatever,

the testimony would be admissible. The fact that it wasn't her intent or may not have been her intent to go further may go to the weight in terms of notice to the Conference. I don't believe that it affects the admissibility.

MR. MORRATO: Your Honor, I wanted to approach for a different reason. This was one of the [p. 146] areas of testimony where the Court was concerned and we discussed by motion for severance and separate trial. This is the testimony of a womanizer, her testimony that she had an opinion that he was a womanizer. It was, I believe, Plaintiff's understanding that this opinion of hers was reported to Sam Day, the District Superintendent, and the Court was going to permit that testimony that the womanizer report was reported to Sam Day and was going to limit that strictly to the Conference.

THE COURT: Okay.

MR. MORRATO: I have re-read her deposition on several occasions and she clearly testifies she had that opinion, but, she never did share it with Sam Day. Therefore, I'm going to ask the Court to exclude any testimony concerning her privately held opinion that he was a womanizer because she never communicated it to anybody at the Conference or the church.

MS. SEELEN: Your Honor, I have gone through the deposition. I never thought she said it to Sam Day, I thought she said it to the District Superintendent, Jan Sumner. And when you go through the deposition –

THE COURT: That is something that may be acceptable to the presence of the jury.

[p. 147] MS. SEELEN: You can't tell from the deposition, and I think it's well put.

THE COURT: It might make sense to excuse the jury for a few minutes and I can give – as long as we are going to do that, the inquiry can be directed at what she told Sumner and whether she mentioned whether she told Sumner not to tell anybody.

(The following proceedings were had in open court in the presence of the jury:)

THE COURT: Members of the jury, we have to take up a matter out of your presence very briefly.

At this time, could you please go to the jury room. Please leave your note pads and folders either on the railing or on the chair. We should be with you shortly.

(The jurors returned to the jury room.)

(The following proceedings were had in open court outside the presence of the jury:)

THE COURT: Let the record show the jury has left the courtroom.

Ms. Seelen do you want to proceed with the offer of proof with regard to the notice to reconcile?

DIRECT EXAMINATION

BY MS. SEELEN:

Q Would you state your name.

[p. 148] A Janet Muncey-Neilson.

Q Is that Reverend Neilson?

A Yes.

Q Reverend Neilson, prior to taking the position at Grace Church in 1986, you had a conversation with Reverend Sumner; do you remember that?

A Yes.

Q What did you discuss with Reverend Sumner?

A I discussed with Reverend Sumner that I had heard rumors that Glenn Chambers was drinking and I was concerned about that.

Q Did you discuss with her any other concerns that you had about Glenn Chambers at that time?

A No.

Q Did you at that time tell her that your concerns were given to her in a confidential relationship?

A At that time?

Q Uh-huh.

A No.

Q Ever?

A Well, I'm not exactly sure what you mean.

Q Okay. Did you discuss with Reverend Sumner your concerns about Glenn Chambers?

A Yes.

[p. 149] Q At a later date?

A Yes, I did.

Q That was November of 1986?

A Yes.

Q That was after you accepted the position at the Grace Church?

A Yes.

Q What did you tell Reverend Sumner in 1986, November of 1986?

A I gave Reverend Sumner a note, a copy of a note I had given to Glenn asking Glenn not to touch me, and that's the conversation that was in confidence.

Q That conversation was in confidence?

A Yes.

Q Do you recall me asking you at your deposition whether that conversation was in confidence and you said no?

A I'm a little confused about what Conference it is at this point.

THE COURT: I was going to raise that also, Ms. Seelen. I think the point here as discussed at the bench is whether the statements were given by Reverend Muncey-Neilson to Ms. Sumner with the understanding that Reverend Sumner – that she should not go any further or report to the Conference. That's basically the issue.

[p. 150] Q (By Ms. Seelen) Did you tell her that you do not want to go any further and it should not be reported to the Conference?

A What I told her was I wanted to handle the situation myself.

Q You did not tell her you were giving it to her in confidence?

A I didn't use those words.

MS. SEELEN: Your Honor, I would just like to quote – ask her, do you recall saying this:

MR. QUIGLEY: What page and line.

MS. SEELEN: Page 72.

THE COURT: Page 72?

Q (By Ms. Seelen) Question: "Was she free to pass that information on without your permission or for a better way of putting it, did you give her that information in confidence?

I don't remember giving her that information in confidence, but if someone gives me information, it's a judgment call on my part.

A I said that?

MR. QUIGLEY: Did you read the full thing?

Q (By Ms. Seelen) Do you recall saying, "I don't remember?" I don't remember giving her that information in confidence, but if someone gave me [p. 151] information, it's a judgment call on my part. If they said they did the not want that passed along, that they wanted to handle it – I said I didn't necessarily want to pass that along.

THE COURT: I would seek to clarify something. When you say, "I didn't necessarily want her to

pass it on," was that what you were thinking or is that – did you tell her that?

THE WITNESS: No, I told her I didn't want her to pass that along.

THE COURT: Okay. I don't want to suggest anything to you now. I'm trying to get to the bottom line issue here.

What did you tell her?

THE WITNESS: I told her I wanted to handle it. I didn't want her to pass it along.

THE COURT: When you say that, what are you referring to?

THE WITNESS: The information I gave her about Glenn. The note that I gave her.

THE COURT: When you say the "information," what information are you referring to?

THE WITNESS: The information I am referring to is that Glenn had come in my office on Sunday mornings a couple of times and touched my arm and [p. 152] one time puckered up.

THE COURT: And what was your relationship with Reverend Sumner at the time in terms of professional acquaintanceship or personal, that sort of thing?

THE WITNESS: I had worked with her at Thornton. I was a student and she was the minister, and I considered her a friend.

THE COURT: All right.

Q (By Ms. Seelen) Reverend Muncey, have you spoken with Mr. Quigley's office about this?

A About what we're discussing right now?

Q Yes.

A Not in general. You mean the deposition part of it? I haven't talked with anyone about the deposition.

Q Have you spoken with anybody about the confidentiality question?

A Yes.

Q Who?

A Well, when you say about the confidentiality, yes, the question – I don't remember talking with the Conference lawyers specifically about the confidentiality issue.

Q When did you talk with them?

[p. 153] A I talked to them on a couple of occasions and I don't remember the dates.

Q Did you get a letter from Mr. Quigley saying you weren't supposed to talk to me?

A I don't remember that. I don't remember it saying we weren't supposed to talk to you.

Q What do you remember it saying?

A I remember it saying that you were asking people to talk with you and that the Conference lawyers did not think that was "proper," but that we were not – we were not told not to talk to you.

Q Did the letter say that Mr. Quigley thought I was acting unethically?

A I don't remember the specific words.

Q Was that the tone of the letter?

A I'm not sure how to answer that.

MS. SEELEN: Your Honor, I would like to give the Court Ms. Muncey Neilson's deposition, at least that portion of it. It referred to the letter. She gave a copy to Janice Sumner.

THE COURT: What specific portion of the deposition are you referring to?

MS. SEELEN: It's sort of roughly circled in red, Your Honor.

THE COURT: All right.

[p. 154] All right. I have read the deposition. What's your position with regard to admissibility, Ms. Seelen?

MS. SEELEN: Your Honor, I think it's clear from the context that we are not dealing with a privilege question. We are the not dealing with a question of whether or not there is some specific statutory privilege that precludes this from coming into evidence. The only question then becomes the real reasonableness of the actions of Jan Sumner.

There is no question – excuse me, Your Honor. There is no question that she is a District Superintendent of the Rocky Mountain Conference. The District Superintendent of the Rocky Mountain Conference was told a specific concern regarding inappropriate touching by Glenn Chambers. At that point, I think that there is a notice to an agent, a clear agent of the Rocky Mountain Conference.

I think it's up to the jury to decide whether it was reasonable for Reverence Sumner to – to keep that information to herself without checking further. She never asked – she never asked Reverend Muncey whether she could pass along or investigate. I think the question becomes: Is it reasonable for a District Superintendent to keep that information to [p. 155] herself.

THE COURT: Thank you. Mr. Quigley?

MR. QUIGLEY: First, Your Honor, I want to address the apparent attack that I have somehow influenced this witness. What occurred – we have two cases going. One is in Judge Peterson's court, and Ms. Seelen sent a request, or a notice, that she was going talk to a whole stream of witnesses concerning both cases.

The issue came to a head in Judge Peterson's court, and Judge Peterson said we had to make a decision, we, the Conference, as to who we felt were agents and who were not. And those who are not, Ms. Seelen can talk to them. I did send a letter to begin with saying we had this disagreement saying that I felt one way and Ms. Seelen said – after Judge Peterson ruled, we had to make the decision. We made decision as to who the agents were, those that were employees of the Conference not the members of the Conference.

The Reverend Muncey-Neilson is not employed by the Conference. So we then wrote another letter – the Judge entered an order telling us we had to do that, and we did that on the record in her courtroom. We then wrote a letter to witnesses as well as that one indicating to them that it was up to them whether they [p. 156] talk to her. In fact, we said that the Court – in the other case,

had told us we had to make this decision and we had made it, and we felt Reverend Muncey-Neilson was not that.

That's the context this all came up in. I will state on the record that I had two conversations at least with Reverend Muncey-Neilson, maybe two or three telephone calls early on, a meeting in my office early on. That I did not at the time of her deposition, did not intend – but I did talk to her before that.

The only other contact that I had with Reverend Muncey-Neilson in this case, I believe she called me a few weeks ago and said Mrs. [sic] Seelen wanted to come to the office and discuss the case. We discussed it at that time. I said it was up to her whether she went there or not. It was her choice, that I couldn't advise her not to go or to go. It was her choice.

I don't know whether she went or not. I didn't speak to her. I didn't see her since. I didn't talk to her until today, until she took the stand. That's the first part. I think that's important to get in the record so there is no question about this later.

The second thing is that it's clear that the testimony of Reverend Muncey-Neilson here today is without influence by the Conference or Reverend [p. 157] Chambers' counsel, that she has said she intended that to be confidential.

And two, there has been no indication that she indicated to anybody or personally held an opinion of Reverend Chambers before she took the job. I think under both those circumstances it's very clear that this testimony is

not admissible in this case. To do so would be severely prejudicial, I believe, to the Conference and to Reverend Chambers.

If it was not meant to be passed on to the conference, even though her friend happened to be a District Superintendent but not her District Superintendent, that it be inappropriate.

Thank you.

THE COURT: Thank you.

Mr. Morrato, this evidence, if it is admissible, it's only admissible to the Conference? Or the statement –

MR. MORRATO: My concern is only the womanizing.

THE COURT: First, with regard to your statement for the record, Mr. Quigley, there are situations where there is some question as to whether or not we should talk to other people, and they consult a lawyer about it, and the lawyer acts the way a lawyer [p. 158] feels is appropriate. This really doesn't enter into my decision in terms of the admissibility in light of the testimony that was elicited. I permitted you to make a statement for the record, and the record stands in regard to that.

With regard to the admissibility of the testimony, it's clear that at the time of the conversation, Reverend Sumner was an agent of the Conference or a District representative. So find. And also that there was some question as to whether or not there was a flat prohibition imposed by Reverend Muncey-Neilson as to the condition of giving this information to Reverend Sumner.

Her deposition, the testimony which stands basically in terms of evidence on the same footing as her testimony in court, is somewhat different from her testimony in court. And based upon her deposition testimony, certainly this is a question as to whether Reverend Sumner was given this information under such circumstances that it would have been as a matter of law unreasonable for her to report it to the Conference.

Basically, it boils down to whether or not – what action Reverend Sumner took with this information. It goes to the reasonableness of her conduct, or it's a question of the reasonableness of her [p. 159] conduct, and it – the statements made by Reverend Muncey-Neilson may affect the weight of the testimony in terms of notice, but it doesn't serve to exclude the testimony.

Could you please get the jury from the jury room?

MS. SEELEN: Your Honor, did I leave the deposition up there?

THE COURT: Yes, you did.

THE COURT: Ms. Seelen?

MS. SEELEN: Yes, Your Honor.

THE COURT: You left another – either an exhibit or copy of an exhibit.

MS. SEELEN: Thank you, Your Honor.

(The following proceedings were had in open court in the presence of the jury:)

THE COURT: Let the record reflect the jury has returned to the courtroom.

Ms. Seelen, you may proceed with the examination of Reverend Muncey-Neilson.

I should instruct the jury at this time that this testimony, or the testimony you are about to hear is admissible against the Conference only. It goes to the issue of notice, and you should not consider it against the Defendant Chambers.

[p. 160] DIRECT EXAMINATION (Continued)

BY MS. SEELEN:

Q State your name for the record?

A Janet Muncey-Neilson.

Q You need to lean forward so they can hear you.

Is that Reverend Muncey-Neilson?

A Yes.

Q And are you a minister in the United Methodist Church?

A Yes, I am.

Q And several months ago an investigator from our office contacted you to speak with you and you declined to do that, correct?

A Yes.

Q And prior to this trial, someone from my office again called you to speak with you and you telephoned Mr. Quigley, correct?

A Yes, I did.

Q And he told you it was your choice, correct?

A Yes.

Q And you decided not to do that?

A Yes, I did.

Q As a minister in the Rocky Mountain [p. 161] Conference of the United Methodist Church, am I correct that your supervisor is a District Superintendent?

A Yes.

Q And that the Rocky Mountain Conference of the Methodist church determines where you are placed?

A Yes, they do.

MS. SEELEN: Your Honor, at this time I would request to ask questions through leading questions.

THE COURT: All right. That leave will be granted.

Q (By Ms. Seelen) Reverend Muncey-Neilson, prior to – prior to – when were you hired by the Conference to go to the Grace United Methodist Church?

A That's a complicated question. I went to Grace United Methodist Church the 1st of July 1986.

Q Did the Conference place you there?

A Yes, they did.

Q Prior to going – to being placed at Grace United Methodist Church, did you express a concern to District Superintendent Jan Sumner?

A Yes, I did.

Q And that was in 1986?

A Yes, it was.

Q District superintendent Jan Sumner is a [p. 162] District Superintendent of Pueblo, correct?

A Yes, she is.

Q That's District Superintendent for the Rocky Mountain Conference, correct?

A Yes.

Q As a district superintendent for the Rocky Mountain Conference, is it fair to say Jan Sumner is the eyes and ears of the Bishop?

A Could you state that again, please?

Q Sure. Have you ever heard the expression the eyes and ears of the Bishop?

A I don't remember hearing it before.

Q It is fair to say that Jan Sumner was an agent of the Bishop?

A Yes.

Q In 1986, you met with Jan Sumner, the District Superintendent of Pueblo, and expressed a concern to her about Glen Chambers, correct?

A Yes, I did.

Q Tell the jury the concern that you expressed to her about Glenn Chambers.

A Over the period of about three weeks, on Sunday mornings Glenn had come into my office –

Q I'm directing you now to a time before you took the job, okay? Before you took the job you talked [p. 163] to Reverend Sumner, correct?

A Yes, over the phone.

Q Because you were concerned about taking the job?

A Yes.

Q What did you tell her about your concerns about taking the job?

A I was concerned because I had heard that Glenn was drinking.

Q And did you report that concern to her?

A Yes, I did.

Q And what was her response?

A I talked with her about that concern in relationship to having grown up in a family where there was a lot of drinking, and she said to me this may be a time to come to terms with that.

Q With your problems with alcoholics?

A Yes.

Q Did she seem surprised had Glenn Chambers – that you had heard that Glenn Chambers was an alcoholic?

A If she was, it wasn't apparent.

Q Did she tell you she had heard that before?

A No.

Q Between – this was early 1986 you had this [p. 164] conversation?

A It would have been in the late spring of 1986.

Q Between the late spring of 1986 and November of 1986, did you have any more convictions with Jan Sumner about concerns that you had regarding Glenn Chambers?

A Yes.

Q Prior to November 4, 1986, did you have any other conversations with her about Glenn Chambers?

A Not that I remember.

Q On November – after November 4, 1986, did you attend a clergywoman retreat?

A Yes, I did.

Q And at the clergywoman retreat, did you run into Reverend Jan Sumner?

A Yes, I did.

Q And she was still the District Superintendent of Pueblo?

A As far as I remember, yes.

MS. SEELEN: May I approach the witness, Your Honor?

THE COURT: Yes.

Q (By Ms. Seelen) And did you give her a copy of Plaintiff's Exhibit 22?

[p. 165] A Yes, I did.

Q Did you further discuss with her concerns that you had regarding Glenn Chambers?

A If I understand the question correctly, no.

Q Didn't you tell her that Glenn Chambers had come to you?

A I told her that Glenn had touched me.

Q Had touched you?

A Yes.

Q And you gave her a copy of Exhibit 22?

A Yes.

MS. SEELEN: Your Honor, at this time I move for the admission of Exhibit 22 and request that it be published to the jury.

THE COURT: Is there any objection?

MR. QUIGLEY: No.

MR. LOGAN: No.

THE COURT: Exhibit 22 is received.

Counsel, it's only a one-sentence statement. It might be something to just read it.

Q (By Ms. Seelen) Would you read it? It's dated November 4, 1986, correct?

A Yes.

Q November 4, 1986. Would you read what – what you wrote on that piece of paper.